

## Federal Maritime Commission

## § 502.70

### (d) *Use of discovery by an intervenor.*

(1) Absent good cause shown, an intervenor desiring to utilize the discovery procedures provided in subpart L must commence doing so no more than 15 days after its motion for leave to intervene has been granted.

(2) The Commission or presiding officer may impose reasonable limitations on an intervenor's participation in order to:

(i) Restrict irrelevant or duplicative discovery, evidence, or argument;

(ii) Have common interests represented by a spokesperson; and

(iii) Retain authority to determine priorities and control the course of the proceeding.

(3) The use of discovery procedures by an intervenor whose motion was filed more than 30 days after publication in the FEDERAL REGISTER of the Commission's order instituting the proceeding or the notice of the filing of the complaint will not be allowed if the presiding officer determines that the use of the discovery by the intervenor will unduly delay the proceeding. [Rule 68.]

### § 502.69 Motions.

(a) In any adjudication, an application or request for an order or ruling not otherwise specifically provided for in this part must be by motion. After the assignment of a presiding officer to a proceeding and before the issuance of his or her recommended or initial decision, all motions must be addressed to and ruled upon by the presiding officer unless the subject matter of the motion is beyond his or her authority, in which event the matter must be referred to the Commission. If the proceeding is not before the presiding officer, motions must be designated as *petitions* and must be addressed to and ruled upon by the Commission.

(b) Motions must be in writing, except that a motion made at a hearing may be sufficient if stated orally upon the record.

(c) Oral argument upon a written motion may be permitted at the discretion of the presiding officer or the Commission.

(d) A repetitious motion will not be entertained.

(e) All written motions must state clearly and concisely the purpose of and the relief sought by the motion, the statutory or principal authority relied upon, and the facts claimed to constitute the grounds supporting the relief requested; and must conform with the requirements of subpart H of this part.

(f) Any party may file and serve a response to any written motion, pleading, petition, application, etc., permitted under this part except as otherwise provided respecting answers (§ 502.62), shortened procedure (subpart K of this part), briefs (§ 502.221), exceptions (§ 502.227), and reply to petitions for attorney fees under the Equal Access to Justice Act (§ 502.503(b)(1)).

(g) *Dispositive and non-dispositive motions defined.* For the purpose of these rules, *dispositive motion* means a motion for decision on the pleadings; motion for summary decision or partial summary decision; motion to dismiss all or part of a proceeding or party to a proceeding; motion for involuntary dismissal; motion for initial decision on default; or any other motion for a final determination of all or part of a proceeding. All other motions, including all motions related to discovery, are non-dispositive motions. [Rule 69.]

### § 502.70 Procedure for dispositive motions.

(a) A dispositive motion as defined in § 502.69(g) of this subpart must include a concise statement of the legal basis of the motion with citation to legal authority and a statement of material facts with exhibits as appropriate.

(b) A response to a dispositive motion must be served and filed within 15 days after the date of service of the motion. The response must include a concise statement of the legal basis of the response with citation to legal authority and specific responses to any statements of material facts with exhibits as appropriate.

(c) A reply to the response to a dispositive motion may be filed within 7 days after the date of service of the response to the motion. A reply may not raise new grounds for relief or present matters that do not relate to the response and must not reargue points made in the opening motion.